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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE LARRY ALAN BURNS)

UNITED STATES OF AMERICA, Plaintiff, v. PAULINO HERRERA-HERNANDEZ, Defendant.	Case No. 14CR3571-LAB DATE: March 24, 2015 TIME: 9:00 a.m. **MR. HERRERA-HERNANDEZ'S REPLY TO THE GOVERNMENT'S RESPONSE TO HIS MOTION TO DISMISS THE INFORMATION**

I. INTRODUCTION

On February 23, 2015, Mr. Herrera-Hernandez filed a motion to dismiss the information due to an invalid deportation. *See* Dkt No. 24. In his motion, Mr. Herrera-Hernandez argued that he was eligible for withdrawal of application at his 2008 and 2009 expedited removal proceedings. Mr. Herrera-Hernandez further argued that his due process rights were violated because immigration officers failed to provide him with Mixteco interpretive services and failed to read to him or allow him to read his statements.

On March 5, 2015, the government filed its response to Mr. Herrera-Hernandez's motion. In its response, the government spent most of its briefing on the argument that Mr. Herrera-Hernandez's motion should be denied as untimely. *See* Dkt. 30, Govt's Resp. at 3-9. Only on page 9 of a 14 page response did the government address the merits of

Mr. Herrera-Hernandez's motion. *Id.* The government argued that Mr. Herrera-Hernandez's due process rights were not violated because he comprehended and spoke Spanish at the time of the Expedited Removals. The government further argues that prejudice cannot be established because Mr. Herrera-Hernandez cannot show humanitarian considerations.

The Court should reject the government's arguments. The government's position regarding the untimeliness of the motion has no merit and reveals the government's fundamental failure to understand its discovery obligations under Rule 16. With regards to the due process violations, the government's position that Mr. Herrera-Hernandez spoke and understood Spanish is undermined by the evidence before the court. Given that there is a factual dispute on the language issue, this Court should hold an evidentiary hearing to resolve the factual dispute. *See* Fed. R. Crim. P. 12(d) ("When factual issues are involved in deciding a motion, the court must state its essential findings on the record"). Finally, the government wholly ignores many of the prejudice arguments raised in the Motion to Dismiss and fails to adequately address the remaining arguments.

II.
GOOD CAUSE HAS BEEN SHOWN AS TO WHY THE MOTION TO DISMISS COULD NOT BE FILED 21 DAYS PRIOR TO THE JANUARY 29, 2015 MOTION HEARING DATE

Under Rule 12, "good cause" may be shown as to why a motion to dismiss was not filed by the deadline set by the Court. *See* Fed. R. Crim. P. 12(e); *see also U.S. v. Aguilera-Rios*, 769 F.3d 626, 630 (9th Cir. 2014) (finding that good cause had been shown in the context of a 1326(d) motion). Mr. Herrera-Hernandez has made this showing. The government's claim that the Motion to Dismiss could have been filed by January 8, 2015 is without merit. As explained in detail in Defense Counsel's affidavit to the Motion to Dismiss, defense counsel requested A-file discovery on November 18, 2014. *See* Def. Mot., Ex. I. Despite this request, the government failed to produce the A-file discovery in time for the motion to be filed by January 8.

A. Mr. Herrera-Hernandez requested A-file discovery on November 18, 2014, thereby triggering the government's disclosure requirements under Rule 16.

Throughout its Response, the government makes it seem as if defense counsel never requested A-file discovery. *See* Govt's Resp. at p. 6 ("Her own declaration and the correspondence between the parties shows that all she had to do was ask."); *id*. at p. 7 ("Therefore, even if counsel felt additional documents were necessary to begin work on the motion, Defendant needed only to request them."). The assertion that defense counsel did not "ask" or "request" the A-file discovery is contradicted by the record.[1]

As indicated in defense counsel's declaration, counsel "asked" and "requested" that A-file discovery be produced as early as November 18, 2014, one day after being appointed to represent Mr. Herrera-Hernandez. *See* Def. Mot., Ex. I at ¶2. The letter specifically makes the following requests:

> **Defendant's Statements****.** We request the government disclose any and all written, recorded and oral statements made by the defendant, as well any written summaries of any oral statements by my client contained in the handwritten notes of any Government agent. Fed. R. Crim. P. 16(a)(1)(A). The Advisory Committee Notes and the 1991 amendments to Rule 16 make clear that the Government must reveal all of the defendant's, whether written or oral, regardless of whether the Government intends to make any use of those statements.
>
> **"A-File." We request an opportunity for defense counsel and/or a defense investigator to inspect and copy the entire contents of the immigration "A-File" at a time mutually convenient to both parties.**
>
> **Tangible Objects****.** We request the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including photographs, books, papers, documents, fingerprint analyses, or copies of portions thereof, which are material to the defense, intended for use in the Government's case-in-chief, or were obtained from or belong to my client. Fed. R. Crim. P. 16(a)(1)(E). **Specifically, we request copies of the audio tapes of any and all alleged prior deportation or removal hearings.**

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[1] As requested by the Court at the Motion Hearing, defense counsel included an affidavit outlining the correspondence between the parties regarding A-file discovery. The government states that it "does not agree [with] a number of points in this timeline," however it fails to address which points it does not agree with, nor does government counsel provide his own affidavit outlining his timeline of events.

See Ex. A (emphasis in original). There is no ambiguity in this request. Not only did the discovery letter request documents from the A-file explicitly, it also requested disclosure of defendant's statements, which are contained in many of the A-file documents. The A-file discovery in possession of the government clearly falls into both of these categories of the request.

Contrary to what the government suggests, it is not defense counsel's burden to specify exactly which A-file documents be produced. *See* Govt. Resp. At 7. After all, defense counsel has no ability to know what all is contained within the A-file since the A-file is in the government's possession. What the government is claiming defense counsel should do – make repeated, particularized requests for specific A-file documents – would expect defense counsel to have knowledge of the contents of the A-file despite never having seen it. That is impossible. More importantly, however, it is the opposite of what Rule 16 demands of the government.

B. The government misunderstands its discovery obligations under Rule 16.

The government's attempt to shirk its discovery obligations by shifting the burden to Mr. Herrera-Hernandez to make specific, particularized requests reveals its fundamental misunderstanding of Rule 16.

Federal Rule of Criminal Procedure 16 provides, in pertinent part, that:

> upon a defendant's request, the government ***must*** disclose to the defendant, ***and make available for inspection, copying, or photographing***, . . . (i) any relevant written or recorded statement by the defendant if: the statement is within the government's possession, custody, or control; and the attorney for the government knows – or through due diligence could know – that the statement exists; (ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent.

Fed. R. Crim. P. 16(a)(1)(B)(i) and (ii) (emphasis added). Rule 16 also provides:

> upon a defendant's request, the government ***must permit*** the defendant to inspect . . . documents . . . or copies or portions of any of these items, if the item is within the government's possession, custody, or control and: (I) the item is material to preparing the defense[.]

Fed. R. Crim. P. 16(a)(1)(E)(I) (emphasis added).

In this case, the A-file discovery requested falls into both of these categories of Rule 16. The Record of Sworn Statements that correspond to all of Mr. Herrera-Hernandez's removals are recorded statements of Mr. Herrera-Hernandez within the government's control that the government knew existed. Moreover, these are statements that Mr. Herrera-Hernandez made in response to interrogation by immigration officers. The A-file discovery is also unquestionably "material" to the defense. The Ninth Circuit has recognized that Rule 16 grants criminal defendants a:

> broad right to discovery, requiring disclosure of all documents material to preparing the defense. Rule 16 is thus broader than Brady. Information that is not exculpatory or impeaching may still be relevant to developing a possible defense.

United States v. Muniz-Jaquez, 718 F.3d 1180, 1183 (9th Cir. 2013). The A-file discovery sought clearly satisfies the low threshold of materiality. *See United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (materiality is satisfied so long as "the information would have helped" the defendant prepare a defense). Indeed, the government does not appear to dispute the materiality of the A-file discovery in its Response.

Should the government attempt to excuse or explain its failure to timely produce the A-file discovery because the A-file was not in the physical possession of the U.S. Attorney's Office, it would be misguided. Federal prosecutors are deemed to have possession and control over material held by other federal agencies as long as they have "knowledge of" and "access" to that material. *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995); *see also United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989) ("The prosecutor will be deemed to have knowledge of and access to anything in the possession, custody, or control of any federal agency participating in the same investigation of the defendant."). Thus, for purposes of Rule 16, possession can be imputed to federal prosecutors even if they do not physically possess the materials.

The Ninth Circuit has emphasized the importance of the government's compliance with its disclosure obligation in *Hernandez-Meza* by stating: "It thus ***behooves*** the government to interpret the disclosure requirement ***broadly*** and turn over whatever evidence it has pertaining to the case." 720 F.3d at 768-769 (emphasis added).

C. The government misrepresents that it produced all "necessary" discovery to the Motion to Dismiss in November.

In its Response, the government argues that the initial discovery batch sent over on November 28, 2014 contained all discovery "necessary" to file the Motion to Dismiss. *See* Govt. Resp. at 5. That is simply not true. As this court is well aware, there are three removals at issue in this case – a 2008 Expedited Removal, 2009 Expedited Removal, and a 2011 Reinstatement of the 2009 Expedited Removal. *See* Def. Mot. at 5-7. The government concedes in its Response that the only A-file discovery it produced in November was the A-file discovery related to the 2008 Expedited Removal. *See* Govt. Resp. at 6. The claim that its production of a printout from the Department of Homeland Security's US-VISIT database listing a February 23, 2009 entry and removal was sufficient to enable defense counsel to file a Motion to Dismiss based on the 2009 Expedited Removal is unfounded. As government counsel should be aware after reading the Motion to Dismiss, the mere fact of removal is not sufficient to support the claim that a deportation was unlawful. *See* Def. Mot. at 8-9 (laying out the requirements for collaterally attacking a removal order). The US-VISIT printout does not include the grounds of removability or provide any way to analyze whether due process violations occurred that resulted in prejudice.

As laid out in the timeline submitted by the defense, which the government does not dispute, the government did not produce the actual A-file documents related to the 2009 Expedited Removal until January 22, 2015. How the government can claim that the Motion to Dismiss could have been filed two weeks earlier – by January 8, 2015 – is difficult to understand.

D. Nothing about the Fast Track program excuses the government's failure to produce the relevant A-file discovery.

The government cannot use the Fast-Track program as a way to avoid producing relevant A-file discovery. Clearly the government recognizes the A-file discovery is relevant, which is why it is produced in Fast-Track. Interestingly enough, no where in the Response does the government explain *why* all of the A-file discovery was not produced during the first production on November 28, 2014. Had all of the A-file discovery been produced on that date, this issue regarding timeliness would have been moot. On November 28, the government did produce some, but not all, documents related to the 2008 Expedited Removal and the 2011 Reinstatement. Presumably, the A-file was in the U.S. Attorney's Office as of that date – nothing in the government's Response states otherwise. The government fails to provide any explanation for why it chose to cherry pick A-file documents to turn over in November, rather than producing a complete set of all A-file discovery.[2]

III.
MR. HERRERA-HERNANDEZ'S HAS ESTABLISHED A DUE PROCESS VIOLATION

In his Motion to Dismiss, Mr. Herrera-Hernandez argues that his due process rights were violated because his Expedited Removal proceedings occurred in Spanish, a language which he does not understand. The government takes issue with this claim, arguing that Mr. Herrera-Hernandez's "self-serving" declaration that he speaks Mixteco is contradicted by the evidence, namely the Record of Sworn Statements. *See* Govt. Resp. At 10. However, the Record of Sworn Statements are merely the officers' characterizations of answers an individual provided – they are not a full and accurate reflection of the answer actually provided.

A. The Record Of Sworn Statement Does Not Support The Claim That Mr. Herrera-Hernandez Understood Spanish

The government's primarily argues that the "Records of Sworn Statements for both removals indicate that Defendant was able to provide the immigration officers . . . with answers to questions regarding his background, his citizenship, his entry into the United States, and his deportation history." *See* Govt. Resp. at 10. There are no audio or video recordings of the interviews from 2008 and 2009. However, the evidence makes clear that Records of Sworn Statements are not accurate reflections of what is actually said during immigration interviews.

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[2] The Fast Track plea agreement received by defense counsel included a deportation date of May 18, 2011. The government knew that defense counsel would need all of the removal documents related to that removal, and any underlying removal documents if it were a reinstatement, to go forward with a change of plea.

The easiest way to illustrate this point is by comparing Mr. Herrera-Hernandez's post-arrest statement on November 15, 2014 (which was videotaped) to the Record of Sworn Statement created based on that post-arrest statement. For example, on the question of citizenship, the following exchange takes place:

> **BPA:** Of what country are you citizen?
> **Mr. Herrera-Hernandez**: [uintelligble] Prieto.
> **BPA**: What?
> **Mr. Herrera-Hernandez**: [unintelligble] Prieto.
> **BPA**: I don't understand. Uh, are you Mexican?
> **Mr. Herrera-Hernandez**: Yes, Mixtec.
> **BPA**: Oh, Mixtec.
> **Mr. Herrera-Hernandez**: Yes.

See Exhibit B, Full Transcript of Nov. 15, 2014 Post-Arrest Statement. The question regarding citizenship – a very basic question – is posed to Mr. Herrera-Hernandez three times before he answers "Mixtec."[3] The Record of Sworn Statement, however, reflects a very different exchange:

> Q. Of what country are you a citizen?
> A. Mixteco.
> Q. Are you a citizen of Mexico?
> A. Yes, Mexican.

See Exhibit C, 2015 Record of Sworn Statement. Not only does the Record of Sworn Statement omit the multiple times the question needed to be posed, it also omits Mr. Herrera-

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[3] Despite Mr. Herrera-Hernandez telling officers that he is Mixteco, the officers did not ask him if he spoke Mixteco or attempt to seek Mixteco interpretive assistance, despite the evidence that he was having trouble understanding their questions. This seems to undermine Officer Lopez's assertion that a translator would have been utilized had Mr. Herrera-Hernandez indicated that he was a Mixteco speaker. *See* Govt. Resp. at 11.

Hernandez's repeated response of "Prieto." More egregiously, the Record of Sworn Statement makes it seem as if Mr. Herrera-Hernandez said "yes, Mexican" in response to the basic question "are you a citizen of Mexico." As evidenced by the Transcript, that exchange never happened.

The inaccuracy reflected in the 2015 Record of Sworn Statement undermines any weight the government wants to place on the accuracy 2008 and 2009 statements. Both of those statements reflect that Mr. Herrera-Hernandez said "Mexico" in response to the question "What country are you a citizen of?" *See* Def. Mot. Exs. C and E. But comparison of the 2015 post-arrest statement with the 2015 Record of Sworn Statement makes it seem implausible that what happened in 2008 and 2009 was as straightforward as it appears on the written statements.

B. The Government Does Not Sufficiently Address Mr. Herrera-Hernandez's Argument That His Due Process Rights Were Violated

Mr. Herrera-Hernandez alleged due process violations for both his 2008 and 2009 Expedited Removals. The government responds to the arguments regarding the 2008 removal by attaching a declaration of Officer Lopez, claiming that a translator would have been utilized had interpretive assistance been required. *See* Govt. Resp. Ex. 1. Notably, Officer Lopez has no independent recollection of Mr. Herrera-Hernandez's removal proceedings. *See id.* at ¶5. Further, his review of what happened in 2008 is based on the Record of Sworn Statement, which is flawed as described above in Section A. *See id.* at ¶11. Moreover, his comments regarding the typical practice to provide interpretive assistance is undermined by the failure to provide interpretive assistance in 2014 despite Mr. Herrera-Hernandez saying he's "Mixteco." *See id.* at ¶16.

The government does not provide *any* evidence to counter Mr. Herrera-Hernandez's declaration regarding what took place in 2009. *See* Def. Mot. Ex. A. There is no declaration from Officer Ceja-Huante, who processed the 2009 Expedited Removal. Nor does the government address the 2009 Record of Sworn Statement's failure to include the language used and affirmative representation that no interpreter was used. *See* Def. Mot. Ex. E. The government's failure to contest allegations regarding the 2009 Expedited Removal require this Court to conclude that Mr. Herrera-Hernandez's due process rights were violated. *See U.S. v. Raya-Vaca*, 771. F3d. 1195, 1205 (9th Cir. 2014) ("Taking into consideration Raya-Vaca's declaration, the error on the Jurat, and the Government's failure to contest Raya-Vaca's allegations, we hold that the immigration officer failed to advise Raya-Vaca of the charge against him and to permit him to review the sworn statement, in contravention of Raya-Vaca's due process rights").

IV.
MR. HERRERA-HERNANDEZ WAS PREJUDICED BY THIS DUE PROCESS VIOLATION

The government wholly ignores Mr. Herrera-Hernandez's argument that he has established prejudice by showing that he was statutorily eligible for withdrawal of application. *See* Def. Mot. at 14-16. Moreover, the government misses the mark on its prejudice analysis under *Raya-Vaca*. The government solely focuses on the six factors of the Inspector's Field Manual despite *Raya-Vaca* instructing that other non-enumerated factors should be taken into account when evaluating plausibility. *See* 771 F.3d at 1208-1209. Mr. Herrera-Hernandez has shown that non-enumerated factors like no criminal history and no suspicion of alien smuggling make him better situated than the defendant in *Raya-Vaca*. As to the enumerated factors, no where does *Raya-Vaca* hold that the humanitarian consideration is limited to the specific facts present in that case. All that is required is plausibility, not probability. *Id*. at 1206. Like in *Raya-Vaca,* Mr. Herrera-Hernandez's prejudice "resulted from" the due process violation.

V.
CONCLUSION

For the reasons stated above, Mr. Herrera-Hernandez's deportations cannot be used to support a section 1326 conviction and the information must be dismissed.

Respectfully submitted,

s/ Amrutha N. Jindal

Dated: March 6, 2015

AMRUTHA N. JINDAL
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Herrera-Hernandez

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EXHIBIT A

FEDERAL DEFENDERS OF SAN DIEGO INC.

The Federal Community Defender Organization for the Southern District of California

November 18, 2014

HAND DELIVERED

Ms. Julia A. Cline
Assistant United States Attorney
880 Front Street
San Diego, CA 92101

RE: United States v. Paulino Herrera Hernandez
Case No. 14MJ3850

Dear Ms. Cline:

I. Assertion of Fifth and Sixth Amendment Rights

I represent the defendant in the above-referenced criminal case. Please be advised that my client chooses to exercise the defendant's right under the Sixth Amendment to have all communication about this case (or any other criminal investigation for that matter) take place through counsel. My client does not wish to deal with any agent or employee of the government directly. Also, please note that California Rule of Professional Conduct § 2-100 bars any contact by you with a represented person such as my client. See United States v. Talao, 222 F.3d 1133 (9th Cir. 2000) (recognizing that Cal. Prof. Conduct Rule 2-100 prohibiting ex-parte contacts with represented parties applies to federal prosecutors); see also ABA Rule 4.2. Of course, the same is true for your agents.

Moreover, my client continues to invoke all Fifth and Sixth Amendment rights to remain silent and to have counsel present during any questioning by you, your agents, investigators or others working on your behalf. See Maine v. Moulton, 474 U.S. 159, 176 (1985) (Sixth Amendment violated when government obtains confession by knowingly circumventing accused's right to have counsel present in a confrontation between accused and government); Edwards v. Arizona, 451 U.S. 477, 484 (1981) (once accused has expressed desire to deal with law enforcement only through counsel, no interrogation may take place in absence of counsel unless accused initiates communication with law enforcement).

Because my client does *not* waive *any* rights pursuant to the Constitution's Fifth and Sixth Amendment and any applicable ethical rule, we request that you, your agents, investigators and any others working on your behalf refrain from communicating with my client in person or otherwise. We further ask that all communications between the parties be through counsel.

You are now on notice of my client's position in this matter. Please advise your agents, investigators and others working on your behalf accordingly.

NBC Building
225 Broadway
Suite 900
San Diego, California
92101-5030
(619) 234-8467
FAX (619) 687-2666

II. Discovery Request

Pursuant to Fed. R. Crim. P. 12(b)(4)(B), 16(a), and 26.2, Brady v. Maryland, 373 U.S. 83 (1963), and all other applicable rules and statutes, discovery requests are made as follows:

Defendant's Statements. We request the government disclose any and all written, recorded and oral statements made by the defendant, as well any written summaries of any oral statements by my client contained in the handwritten notes of any Government agent. Fed. R. Crim. P. 16(a)(1)(A). The Advisory Committee Notes and the 1991 amendments to Rule 16 make clear that the Government must reveal all of the defendant's, whether written or oral, regardless of whether the Government intends to make any use of those statements. **We specifically request any audio and videotaped copies of any statements and any rough notes taken pertaining to the substance of my client's statements. Additionally, we request copies of the audio tapes of any of my client's alleged prior deportations or removals. Furthermore, pursuant to Fed. R. Crim. P. 16(a)(1)(B)(i), we request copies of the audio tapes of any taped telephone call made by my client while in custody.**

Arrest Reports, Notes and Dispatch Tapes. We request that all arrest reports, notes, dispatch or any other tapes and TECS records that relate to the circumstances surrounding the arrest or any questioning, be turned over. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in which my client's statements or any other discoverable material is contained. Such material is discoverable under Fed. R. Crim. P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). The Government must produce arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the defendant. See Fed. R. Crim. P. 16(a)(1)(A) and (B), Fed. R. Crim. P. 26.2.

"A-File." We request an opportunity for defense counsel and/or a defense investigator to inspect and copy the entire contents of the immigration "A-File" at a time mutually convenient to both parties.

Brady Material. We request all documents, statements, agents' reports, and tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the Government's witnesses and the Government's case. Under Brady, impeachment as well as exculpatory evidence falls within the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976). Further, Brady requires the government disclose any information that may result in a lower sentence under the sentencing guidelines, notwithstanding its advisory nature, because it is exculpatory and/or mitigating evidence.

Prior Record. We request disclosure of any prior criminal record. Fed. R. Crim. P. 16(a)(1)(D). **Specifically, we request a certified copy of the charging documents, plea and sentencing transcripts, and judgment and conviction of any prior conviction used to increase or adjust my client's sentence under the advisory guidelines.**

Any Proposed 404(b) Evidence. Evidence of prior similar acts is discoverable under Fed. R. Crim. P. 16(a)(1)(E) and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature . . . ." of any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial.

We request the government "articulate precisely the evidential hypothesis by which a fact of consequence may be inferred from the other acts evidence." United States v. Mehrmanesh, 689 F.2d 822, 830 (9th Cir. 1982) (emphasis added; internal citations omitted); see also United States v. Brooke, 4 F.3d 1480, 1483 (9th Cir. 1993) (reaffirming Mehrmanesh and reversing convictions). We request **three weeks notice before trial** to give the defense time to adequately investigate and prepare for trial.

Evidence Seized. We request production of evidence seized as a result of any search, either warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(E).

Request for Preservation of Evidence. We further specifically request the preservation of all physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the Government and which relates to the arrest or the events leading to the arrest in this case. This request includes, but is not limited to, the results of any fingerprint analysis, all my client's personal effects, and any evidence seized from my client.

Tangible Objects. We request the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including photographs, books, papers, documents, fingerprint analyses, or copies of portions thereof, which are material to the defense, intended for use in the Government's case-in-chief, or were obtained from or belong to my client. Fed. R. Crim. P. 16(a)(1)(E). **Specifically, we request copies of the audio tapes of any and all alleged prior deportation or removal hearings.**

Expert Witnesses. We request the name, qualifications, and a written summary of the testimony of any person that the Government intends to call as an expert witness during its case in chief. Fed. R. Crim. P. 16(a)(1)(G). The defense requests the notice of expert testimony be provided a minimum of **three weeks prior to trial** so the defense can properly prepare to address and respond to this testimony, including obtaining its own expert and/or investigating the opinions, credentials of the Government's expert and a hearing in advance of trial to determine the admissibility of qualifications of any expert. See Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 152 (1999) (trial judge is "gatekeeper" and must determine, reliability and relevancy of expert testimony and such determinations may require "special briefing or other proceedings").

Scientific and Other Information. We moreover request the results of any scientific or other tests or examinations conducted by any Government agency or their subcontractors in connection with this case. See Fed. R. Crim. P. 16(a)(1)(F).

***Henthorn* Material.** We request that the Assistant United States Attorney ("AUSA") assigned to this case oversee (not personally conduct) a review of all personnel files of each agent involved in the present case for impeachment material. See Kyles v. Whitley, 514 U.S. 419 (1995) (holding that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the Government's behalf in the case, including the police"); United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991); United States v. Jennings, 960 F.2d 1488 (9th Cir. 1992) (AUSA may not be ordered to personally conduct examination of records; appropriate Government agency may review files and notify AUSA of contents as long as AUSA makes the determination regarding material to be disclosed); United States v. Herring, 83 F.3d 1120 (9th Cir. 1996) (accord).

Evidence of Bias or Motive to Lie. We request any evidence that any prospective Government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his or her testimony.

Impeachment Evidence. We request any evidence that any prospective Government witness has engaged in any criminal act whether or not resulting in a conviction and whether any witness has made a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and 613; Brady v. Maryland, 373 U.S. 83 (1963).

Evidence of Criminal Investigation of Any Government Witness. We request any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct.

Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth Telling. We request any evidence, including any medical or psychiatric report or evaluation, that tends to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired, and any evidence that a witness has ever used narcotics or other controlled substances, or has ever been an alcoholic.

Witness Addresses. We request the name and last known address of each prospective Government witness and the name and last known address of every witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof) who will not be called as a Government witness.

Name of Witnesses Favorable to the Defendant. We request the name of any witness who made an arguably favorable statement concerning my client or who could not identify the defendant or who was unsure of my client's identity, or participation in the crime charged.

Statements Relevant to the Defense. We request disclosure of any statement relevant to any possible defense or contention my client can or may assert in defense of the case.

***Giglio* Information and Agreements Between the Government and Witnesses.** Pursuant to Giglio v. United States, 405 U.S. 150 (1972), we request all statements and/or promises, express or implied, made to any witness, in exchange for their testimony in this case, and all other information which could be used for impeachment. We also request discovery regarding any other express or implicit promise, understanding, offer of immunity, of past, present, or future compensation, or any other kind of agreement, promise, or understanding, including any implicit understanding relating to criminal or civil income tax, forfeiture or fine liability, between any prospective Government witness and the Government (federal, state and/or local). This request also includes any discussion with a potential witness about or advice concerning any contemplated prosecution, or any possible plea bargain, even if no bargain was made, or the advice not followed, and specifically includes any discussion with a potential witness regarding that witness' immigration status and/or any affect that the witness' statements or lack thereof might have on that status, including the granting or revoking of such immigration status or any other immigration status, including but not limited to citizenship, nationality, a green card, border crossing card, parole letter, or permission to remain in the United States.

Informants and Cooperating Witnesses. We request disclosure of the names and addresses of all informants or cooperating witnesses used or to be used in this case, and in particular, disclosure of any informant who was a percipient witness in this case or otherwise participated in the crime charged against the defendant. The Government must disclose the informant's identity and location, as well as the existence of any other percipient witness unknown or unknowable to the defense. Roviaro v. United States, 353 U.S. 53, 61-62 (1957). The Government must disclose any information derived from informants which exculpates or tends to exculpate the defendant. Brady v. Maryland, 373 U.S. 83 (1963).

Bias by Informants or Cooperating Witnesses. We request disclosure of any information indicating bias on the part of any informant or cooperating witness. Giglio v. United States, 405 U.S. 150 (1972). Such information includes, but is not limited to, any inducements, favors, payments or threats that were made to the witness in order to secure cooperation with the authorities.

Jencks Act Material. We request production in advance of trial of all material, including dispatch tapes, which the Government must produce pursuant to the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid the possibility of delay at trial to allow the defense to investigate the Jencks material. A verbal acknowledgment that "rough" notes constitute an accurate account of the witness' interview is sufficient for the report or notes to qualify as a statement under § 3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92 (1963); see United States v. Boshell, 952 F.2d 1101 (9th Cir. 1991) (agent's interview notes reviewed with interviewee subject to Jencks Act).

Thank you for your assistance in this matter. If you have any questions about this letter or my client's invocation of Fifth and Sixth Amendment rights and request to have all communications between parties take place through counsel, please feel free to contact me at (619) 234-8467. However, I ask that all communication in regard to this letter and/or its contents take place in writing by letter or email.

Sincerely yours,

/s/ Amrutha N. Jindal
AMRUTHA N. JINDAL, Esq.
Trial Attorney

ANJ/SE

EXHIBIT B

SOUTHERN DISTRICT OF CALIFORNIA

U.S. ATTORNEY'S OFFICE

BILINGUAL
TRANSCRIPTION AND TRANSLATION

Post-arrest interview

US v. Paulino Herrera-Hernandez
14CR3571

Prepared for AUSA Benjamin J. Katz

By Andrew J. Hanson, Language Specialist
U.S. Attorney's Office, San Diego, CA

SUMMARY

A post-arrest interview in Spanish is herein transcribed and translated.

The audio is taken from a disk labeled: "1326 [/] 14MJ3850 [/] Herrera-Hernandez", which contains a file labeled: HERRERA-Hernandez, exp.

The numbers in the middle column are show the approximate time from the start during play-back.

LEGEND

BPA:	Male voice:	Self identifies as Border Patrol Agent Araceli Barba de la Cruz
HRR:	Male voice:	Self-identifies as Paulino Herrera-Hernandez
OFR:	Male voice:	Identified by Agent Barba de la Cruz as BPA Randy Miller.

[*ol*] OVERLAPPING SPEECH
[*ui*]: UNINTELLIGIBLE

Italics: ***Source language is English***
Normal font: **Source language is Spanish**

I, Andrew J. Hanson, Interpreter Certified by the ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, Certificate Number 95-036, declare that I am fluent in the English and Spanish languages, and that I transcribed and translated a video recording, the contents of which appear below, to the best of my ability, on or about February 9, 2015, in San Diego, CA.

____

Andrew J. Hanson
<Andrew.Hanson@usdoj.gov>
(619)546-8816

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
[Beginning of transcription.]			***[Beginning of translation.]***
[Unintelligible voices in back-ground.]	00:08		*[Unintelligible voices in back-ground.]*
[*ui*] *don´t have…* [*ui*] *today.* [*ui*] Señor, ¿cómo se llama?	00:26	***BPA:***	[*ui*] *don´t have…* [*ui*] *today.* [*ui*] Sir, what is your name?
Paulino.	00:41	***HRR:***	Paulino.
Paulino. *The following is a statement before Border Patrol Agent Araceli Barba de la Cruz, witnessed by Border Patrol Agent Randy Miller at the Brownfield Border Patrol Station in San Diego, California. The statement is being given by the defendant, Herrera-Hernandez, Paulino, in the case of U.S. ver-sus Paulino Herrera-Hernandez. Today´s date is November 15, 2014, and the time is 8:36 a.m. Both agents are in plain clothes with no weapons visible. Sir, would you prefer to speak in English or in Spanish?* ¿Quiere hablar en ingés o en español?		***BPA:***	Paulino. *The following is a statement before Border Patrol Agent Araceli Barba de la Cruz, witnessed by Border Patrol Agent Randy Miller at the Brownfield Border Patrol Station in San Diego, California. The statement is being given by the defendant, Herrera-Hernandez, Paulino, in the case of U.S. ver-sus Paulino Herrera-Hernandez. Today´s date is November 15, 2014, and the time is 8:36 a.m. Both agents are in plain clothes with no weapons visible. Sir, would you prefer to speak in English or in Spanish?* Do you want to talk in English or in Spanish?
En español.	01:24	***HRR:***	In Spanish.
Español.		***BPA:***	Spanish.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Sí.		***HRR:***	Yes.
Los siguientes avisos de derechos y sus declaraciones están siendo grabadas en audio y video. ¿Entiende usted eso? Su declaración va a ser grabada.		***BPA:***	The following notifications of rights and your statements are being recorded in audio and video. Do you understand that? Your statement is going to be recorded.
Sí.	01:39	***HRR:***	Yes.
¿Está… ah, está usted bajo la influencia de algunas drogas o alcohol en este momento?		***BPA:***	Are you…, uh, are you under the influence of any drugs or alcohol at this time?
No.		***HRR:***	No.
Usted debe de entender que ha habido un cambio en cual usted no regresará a su país en este momento. En vez, ahora será procesado para un delito federal de entrar después de una deportación. ¿Entiende lo que le acabo de explicar?		***BPA:***	You should understand that there has been a change in which you will not return to your country at this time. Instead, now you will to be prosecuted for a federal crime of entering after a deportation. Do you understand what I just explained to you?
Sí.	02:05	***HRR:***	Yes.
The time is 8:37 a.m. Como no es ciudadano de los Estados Unidos, al ser arrestado o detenido, tiene derecho a pedirnos que notifiquemos a los		***BPA:***	*The time is 8:37 a.m.* Since you are not a citizen of the United States, upon being arrested or detained, you have the right to ask us to notify the consular

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
representantes consulares de su país en los Estados Unidos si lo desea. Entre otras cosas, un funcionario consular de su país puede ayudarle a obtener asesoramiento legal, ponerse en contacto con su familia y visitarle en la cárcel. Si usted desea que notifiquemos a los funcionarios consulares de su país, puede solicitarlo ahora o en cualquier oportunidad en el futuro. Después de que se le haya notificado los funcionarios consulares de su país, ellos podrán llamarle y visitarle. ¿Entiende usted que tiene derecho a hablar con el consulado?			representatives of your country in the United States, if you so desire. Among other things, a consular official from your country can help you obtain legal advice, get in touch with your family, and visit you in jail. If you want us to notify the consular officials from your country, you can request it now or at any opportunity in the future. After the consular officials of your country have been notified, they will be able to call you or visit you. Do you understand that you have a right to talk with the Consulate?
Sí.	02:58	***HRR:***	Yes.
¿Sí? Ocupo que firme. Acérquese. Aquí dice que usted tiene, ah, que entiende que tiene derecho a hablar con el Consulado.		***BPA:***	Yes? I need you to sign. Come closer. Here it says that you have, uh, that you understand that you have a right to talk with the Consulate.
Uhm jhm.		***HRR:***	Uh huh.
[*Pause*]			[*Pause*]
The time is 8:37, 8:38 a.m. Teniendo este derecho en mente,	03:21	***BPA:***	*The time is 8:37, 8:38 a.m.* Having this right in mind, do you

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
¿gusta usted hablar con el Consulado Mexicano?			want to talk with the Mexican Consulate?
Sí.		***HRR:***	Yes.
¿Sí?		***BPA:***	Yes?
Sí.	03:37	***HRR:***	Yes.
[*Pause*]			[*Pause*]
Okey, más después le van a dar la oportunidad de que hable. Ahora le voy a leer sus derechos, ah, criminales. Antes de que le hagamos cualquier pregunta, usted debe de comprender sus derechos.	03:50	***BPA:***	Okay, later on they´ll give you a chance to call. Now I´m going to read your, uh, criminal rights. Before we ask you any question, you should understand your rights.
Sí.		***HRR:***	Yes.
Usted tiene el derecho de guardar silencio. Cualquier cosa que usted diga puede ser usada en su contra en un juzgado de leyes, en cualquier… o en cualquier procedimiento administrativo o de Inmigración. Usted tiene el derecho de hablar con un abogado para que le aconseje antes de que le hagamos alguna pregunta, y de tenerlo presente con usted durante las preguntas. Si usted	04:04	***BPA:***	You have the right to keep silent. Anything that you say can be used against you in a court of law, in any... or in any administrative or Immigration proceeding. You have the right to speak with an attorney so that he may counsel you before we ask you any question, and to have him present with you during the questions. If you do not have the money to hire an attorney, one can be provided

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
no tiene el dinero para emplear un abogado, se le puede proporcionar uno antes de que le hagamos alguna pregunta si usted lo desea. Si usted decide contestar nuestras preguntas ahora, sin tener a un abogado presente, siempre tendrá usted derecho de dejar de contestar cuando guste. Usted también tiene el derecho de dejar de contestar cuando guste hasta que pueda hablar con un abogado. ¿Está usted… ah…? ¿Entiende usted cada uno de los derechos como se los he leído?			for you before we ask you any question if you so desire. If you decide to answer our questions now without an attorney present, you will always have the right to quit answering whenever you please. You also have the right to quit answering whenever you please until you can speak with an attorney. Are you, uh...? Do you understand each one of these rights as I have read them to you?
No.	04:59	***HRR:***	No.
¿No entiende sus derechos?		***BPA:***	You don't understand your rights?
No.		***HRR:***	No.
¿Qué fue lo que no entendió? Tiene derecho de guardar silen-cio. ¿Entiende eso? Que dice que no… si no quiere, no quie… no tiene que hablar con nosotros. ¿Entiende?	05:03	***BPA:***	What was it that you didn't understand? You have the right to keep silent. Do you understand that? That says that you don't... if you don't want to, don't want... you don't have to talk with us. Do you understand?

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Sí.		***HRR:***	Yes.
Cualquier cosa que usted diga puede ser usada en su contra en un juzgado de leyes, procedimiento administrativo o un, ahm, o en cualquier… para cualquier, ah, procedimiento de Inmigración. ¿Entiende que puede ser… lo que usted diga puede ser usada en su contra?	05:16	***BPA:***	Anything that you say can be used against you in a court of law, administrative proceeding or a, uh, or in any… for any, uh, Immigration proceeding. Do you understand that it can be... whatever you say can be used against you?
Sí.		***HRR:***	Yes.
Okey. Usted tiene el derecho a hablar con un abogado para que le aconseje antes de que le hagamos alguna pregunta. Si usted quiere hablar con un abogado primero…	05:34	***BPA:***	Okay. You have the right to speak with an attorney so that he may counsel you before we ask you any question. If you want to speak with an attorney first...
Sí.		***HRR:***	Yes.
Puede conseguir… podemos, ah… ah… puede hablar con un abogado primero. ¿Entiende eso?		***BPA:***	You can get... we can, uh... uh... you can speak with an attorney first. Do you understand that?
Sí.	05:48	***HRR:***	Yes.
Okey, si usted no tiene el dinero para, ah, para conseguir un abogado o para pagarle al abogado, se le puede… se le puede		***BPA:***	Okay, if you do not have the money to, uh, to get an attorney or to pay an attorney, one can be... one can be obtained

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
conseguir uno antes sin costo a usted. ¿Entiende eso?			without cost to you beforehand. Do you understand that?
Sí. Sí.		***HRR:***	Yes. Yes.
Okey. Si usted decide contestar, ah, nuestras preguntas ahora, sin un abogado, si ya no quiere seguir contestando, usted puede dejar de contestar. ¿Entiende eso?	06:01	***BPA:***	Okay. If you decide to answer, uh, our questions now, without an attorney, if you do not want to continue answering, you can quit answering. Do you understand that?
[*ui*].		***HRR:***	[*ui*]
¿Sí? Okey. Entonces, esos son todos los derechos. ¿Entiende usted cada uno de los derechos como se los leí? ¿Sí?	06:12	***BPA:***	Yes? Okay. So those are all the rights. Do you understand each one of these rights as I have read them to you? Yes?
[*ui*]		***HRR:***	[*ui*]
Entonces, ocupo que pongas sus iniciales aquí. [*Pause*] No, no, aquí, sus iniciales en la misma raya. Okey. Entonces, espéreme. [*ui*] ¿Está usted dispuesto a contestar mis preguntas sin tener a un abogado presente?		***BPA:***	So I need you to put your initials here. [*Pause*] No, no, here, your initials on the same line. Okay. So, hang on a second. [*ui*] Are you willing to answer my questions without having an attorney present?
Sí.	06:43	***HRR:***	Yes.
¿Sí?		***BPA:***	Yes?
Sí.		***HRR:***	Yes.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Okey, entonces, ponga sus iniciales. [*Pause*] Y su firma. Eso indica que usted está dispuesto a contestar mis preguntas sin tener a un abogado presente. [*Pause*] Muchas gracias. Siéntese.	06:44	***BPA:***	Okay, so put your initials. [*Pause*] And your signature. That indicates that you are willing to answer my questions without having an attorney present. [*Pause*] Thank you very much. Sit down.
Sí.		***HRR:***	Yes.
The time is 8:42 a.m. [*Pause*] ¿Cuál es su nombre… cuál es su nombre verdadero y correcto?	07:08	***BPA:***	*The time is 8:42 a.m.* [*Pause*] What is your name... what is your true and correct name?
Paulino.		***HRR:***	Paulino.
¿Paulino qué?	07:31	***BPA:***	Paulino what?
Herrera Hernández.		***HRR:***	Herrera Hernandez.
Herrera Hernández.		***BPA:***	Herrera Hernandez.
Sí.		***HRR:***	Yes.
¿Ha usado algún otro nombre alguna vez?	07:41	***BPA:***	Have you ever used any other name?
No.		***HRR:***	No.
¿Cuál es su fecha y lugar de nacimiento? ¿Cuál es la fecha?		***BPA:***	What is your date and place of birth? What is the date?
Mil novecientos setenta y dos.	07:53	***HRR:***	Nineteen seventy-two.
¿Y qué mes?		***BPA:***	And what month?
Diez de marzo.		***HRR:***	March 10.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
¿El diez de marzo?		***BPA:***	March 10?
Sí.	08:00	***HRR:***	Yes.
[*Pause*]			[*Pause*]
¿Y cuál es el lugar de naci-miento, el nombre de la ciudad, del estado y del país?		***BPA:***	And what is your place of birth, the name of the city, the state and the country?
[*ui*] Grande.	08:17	***HRR:***	[*ui*] Grande.
¿Cómo?		***BPA:***	What?
Ochoapa Grande.		***HRR:***	Ochoapa Grande.
¿Chapa Grande?		***BPA:***	Chapa Grande?
No, Ochoapa.		***HRR:***	No, Ochoapa.
¿Ochapa?		***BPA:***	Ochapa?
Sí. En el, este, [*ui*]…		***HRR:***	Yes. In the, uh, [*ui*]…
¿Y en, ah, cuál estado queda?	08:28	***BPA:***	And in, uh, which state is it?
En Guerrero.		***HRR:***	In Guerrero.
¿Guerrero?		***BPA:***	Guerrero?
Sí.		***HRR:***	Yes.
En el estado de México.	08:35	***BPA:***	In the state of Mexico.
Sí, estado de México.		***HRR:***	Yes, state of Mexico.
¿De qué país es usted ciuda-dano?		***BPA:***	Of what country are you a citizen?
[*ui*] Prieto.		***HRR:***	[*ui*] Prieto.
¿De qué país es usted ciuda-		***BPA:***	Of what country are you a

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
dano?			citizen?
[*ui*] Prieto.		***HRR:***	[*ui*] Prieto.
¿Cómo?	08:50	***BPA:***	What?
[*ui*] Prieto.		***HRR:***	[*ui*] Prieto.
No entiendo. Ah, ¿es mexicano?	08:55	***BPA:***	I don't understand. Uh, are you Mexican?
Sí, mixteco.		***HRR:***	Yes, Mixtec.
Oh, mixteco.		***BPA:***	Oh, Mixtec.
Sí.	09:01	***HRR:***	Yes.
Okey. [*Pause*] ¿De qué país es su padre ciudadano y dónde nació él?		***BPA:***	Okay. [*Pause*] Of what country is your father a citizen and where was he born?
[*ui*] Prieto.		***HRR:***	[*ui*] Prieto.
¿Guerrero Prieto?		***BPA:***	Guerrero Prieto?
Sí, [*ui*] Prieto.		***HRR:***	Yes, [ui] Prieto.
¿Y de qué país es ciudadano?	09:29	***BPA:***	Of what country is he a citizen?
De Ochoapa.		***HRR:***	From Ochoapa.
¿De Chiapas?		***BPA:***	From Chiapas?
No, Ochoapa, Ochoapa Grande.		***HRR:***	No, Ochoapa, Ochoapa Grande.
Pero, ¿de qué país es ciudadano?		***BPA:***	But of what country is he a citizen?
[*ui*]		***HRR:***	[*ui*]
Ciudadano quiere decir de un país, así como México, los Esta-		***BPA:***	Citizen means from a country, like Mexico, the United States,

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
dos Unidos, Canadá.			Canada.
No, de México.	09:48	***HRR:***	No, from Mexico.
En México.		***BPA:***	In Mexico.
Sí, México.		***HRR:***	Yes, Mexico.
¿De qué país es su madre ciudadana y dónde nació ella?		***BPA:***	Of what country is your mother a citizen and where was she born?
[*ui*] Prieto.	09:59	***HRR:***	[*ui*] Prieto.
¿Guerrero Prieto?		***BPA:***	Guerrero Prieto?
Sí. [*ui*] Prieto.		***HRR:***	Yes. [ui] Prieto.
¿Y su ciudadanía ella… de ella es? ¿De qué país es ciudadana?	10:06	***BPA:***	And her citizenship... hers is...? Of what country is she a citizen?
[*Pause*]			[*Pause*]
También Ochoapa.		***HRR:***	Also Ochoapa.
¿También… es… es mexicana?	10:21	***BPA:***	Is... is she also Mexican?
Sí, [*ui*] también.		***HRR:***	Yes, [ui] too.
[*Pause*]			[*Pause*]
¿Tiene usted algún documento de Inmigración que le permita entrar y permanecer en los Estados Unidos? ¿Qué…?	10:42	***BPA:***	Do you have any Immigration document that might allow you to enter and remain in the United States? What…?
[*ui*]		***HRR:***	[*ui*]
¿No?		***BPA:***	No?
No.		***HRR:***	No.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
¿Ha sido usted alguna vez ordenado deportado, excluido o removido de los Estados Unidos? [*Pause*] ¿Lo han deportado de los Estados Unidos?		***BPA:***	Have you ever been ordered deported, excluded or removed from the United States? Have you been deported from the United States?
Casi dos o tres veces ya.	11:07	***HRR:***	Almost two or three times already.
¿Cómo?		***BPA:***	What?
Casi dos veces.		***HRR:***	Almost two times.
¿Dos veces?		***BPA:***	Two times?
Sí.	11:16	***HRR:***	Yes.
¿Ocurrió esto después de una audiencia ante un juez de Inmigración?		***BPA:***	Did this occur after a hearing before an Immigration Judge?
Sí.		***HRR:***	Yes.
¿A qué… a qué país fue deportado?	11:27	***BPA:***	To what... to what country were you deported?
[*ui*] a Tijuana.		***HRR:***	[ui] to Tijuana.
¿Lo sacaron a Tijuana?		***BPA:***	Were you removed to Tijuana?
Sí.		***HRR:***	Yes.
Entonces, lo sacaron, ah… Entonces, lo regresaron para México.	11:35	***BPA:***	So you were removed, uh... So you were returned to Mexico.
Sí.		***HRR:***	Yes.
Después de que fue usted or-	11:55	***BPA:***	After you were ordered deported

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
denado deportado de los Estados Unidos, ¿pidió usted, ahm,…? Disculpe. ¿Ha solicitado usted al Procurador General de los Estados Unidos por un permiso para entrar de nuevo a los Estados Unidos después de su deportación?			from the United States, did you request, uhm,...? Excuse me. Have you applied to the Attorney General of the United States for a permit to re-enter the United States after your deportation?
No, no, [*ui*].	12:16	***HRR:***	No, no, [*ui*].
¿Cuándo entró usted a los Estados Unidos?		***BPA:***	When did you enter the United States?
[*ui*] dos nomás.		***HRR:***	[ui] two is all.
¿Cuándo entró?		***BPA:***	When did you enter?
Dos.	12:30	***HRR:***	Two.
Hoy es, ahm, hoy es sábado. ¿Cuándo entró usted a los Estados Unidos?		***BPA:***	Today is, uhm, today is Saturday. When did you enter the United States?
No, jueves, jueves [*ui*].		***HRR:***	No, Thursday, Thursday [ui].
¿El jueves?		***BPA:***	Thursday?
Sí.		***HRR:***	Yes.
Hace, entonces, fue jueves, viernes, sábado, ¿hace tres días?	12:46	***BPA:***	So it was Thursday, Friday, Saturday, three days ago?
Sí.		***HRR:***	Yes.
[*Pause*]			[*Pause*]

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Hoy estamos a quince. El día jueves era el día trece. ¿Entró el día trece?	13:07	***BPA:***	Today's the fifteenth. Thursday was the thirteenth. Did you enter the thirteenth?
Sí, sí.		***HRR:***	Yes, yes.
[*Pause*]			[*Pause*]
¿Cómo a qué horas?	13:35	***BPA:***	Like about what time?
Como a las ocho.		***HRR:***	About 8:00.
¿De la mañana o de la noche?	13:39	***BPA:***	In the morning or at night?
Sí, de la mañana.		***HRR:***	Yes, in the morning.
¿De la mañana?		***BPA:***	In the morning?
No, de la noche.		***HRR:***	No, at night.
De la noche.		***BPA:***	At night.
Sí.		***HRR:***	Yes.
¿Por dónde entró usted en esta ocasión?	13:51	***BPA:***	Through where did you enter on this occasion?
[*Pause*]			[*Pause*]
[*ui*]	14:03	***HRR:***	[*ui*]
¿Por dónde entró?		***BPA:***	Through where did you enter?
[*ui*] la caseta.		***HRR:***	[*ui*] the booth.
¿En la caseta?		***BPA:***	At the booth?
Sí.		***HRR:***	Yes.
Entonces, ¿en… no entró por la garita?		***BPA:***	So you en… you didn’t enter through the port of entry?

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
No, no.	14:15	***HRR:***	No, no.
¿Por dónde?		***BPA:***	Through where?
Era el cerro. Era el cerro allá. [*ui*].		***HRR:***	It was the hills. It was the hills over there. [*ui*].
Okey.		***BPA:***	Okay.
Sí.	14:22	***HRR:***	Yes.
[*Pause*]			[*Pause*]
¿Había cerco donde usted cruzó?	14:52	***BPA:***	Was there a fence where you crossed?
[*ui*].		***HRR:***	[*ui*]
¿Había cerco?		***BPA:***	Was there a fence?
Sí.	14:58	***HRR:***	Yes.
¿Cómo lo hizo para subir el cerco?		***BPA:***	How did you get over the fence?
Ya subí el cerro, pues.		***HRR:***	Well, then I climbed the hill.
Pero el cerco. ¿Había cerco?		***BPA:***	But the fence. Was there a fence?
Sí.	15:09	***HRR:***	Yes.
¿Cómo cruzó el cerco?		***BPA:***	How did you cross the fence?
[*ui*]	15:15	***HRR:***	[*ui*]
[*Pause*]			[*Pause*]
¿Puso una soga para brincar el cerco?	15:25	***BPA:***	Did you put a rope to hop the fence?
Sí.		***HRR:***	Yes.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
La barda, ¿o cómo?		***BPA:***	The barrier, or how?
Sí. No, la barda [*ui*] pa´ allá. Una [*ui*].		***HRR:***	Yes. No, the fence [*ui*] over there. A [*ui*].
¿La subió?		***BPA:***	Did you climb it?
Sí.	15:35	***HRR:***	Yes.
¿O le sacó la vuelta?		***BPA:***	Or did you go around it?
No, la subí.		***HRR:***	No, I climbed it.
¿La subí? ¿Cómo?	15:37	***BPA:***	I climbed it? What?
[*ui*]		***HRR:***	[*ui*]
¿Cómo?		***BPA:***	What?
[*ui*]		***HRR:***	[*ui*]
Oh.	15:42	***BPA:***	Oh.
[*Pause*]			[*Pause*]
¿Adónde iba usted? El nombre de la ciudad y el estado. ¿Adónde vas?	16:08	***BPA:***	Where were you going? The name of the city and the state. Where are you going?
Santa María.		***HRR:***	Santa Maria.
¿Santa María, en California?		***BPA:***	Santa Maria, in California?
Sí.	16:20	***HRR:***	Yes.
[*Pause*]			[*Pause*]
Sus antecedentes dicen que usted tiene, por lo menos, vein-tiun arrestos con Inmigración. ¿Es eso correcto?	16:32	***BPA:***	Your record says that you have at least twenty one arrests with Immigration. Is that correct?

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Sí, [*ui*] agarrado en el cerro, pues.		***HRR:***	Yes, well [*ui*] caught in the hills.
Sí.		***OFR:***	Yes.
¿Sí?		***BPA:***	Yes?
Sí.		***HRR:***	Yes.
Y, este, ¿fue a ver el dos… el Juez dos veces… por entrar después de su deportación?		***BPA:***	And, uh, twice… twice you went to see the Judge for entering after your deportation?
No.		***HRR:***	No.
¿Nada más una vez fue?	16:53	***BPA:***	It was just once?
Sí, apenas ahorita.		***HRR:***	Yes, just right now.
¿Una vez fue a ver al Juez…?		***BPA:***	One time you went to see the Judge…?
Sí.		***HRR:***	Yes.
¿O cuántas veces?		***BPA:***	Or how many times?
No, nomás esta.		***HRR:***	No, just this one.
Okey. ¿Entonces sus antecedentes que tenemos…?	17:00	***BPA:***	Okay. So the record that we have…?
Desde cinco años, la verdad, [*ui*].		***HRR:***	From five years ago, honestly, [*ui*].
[*Pause*]			[*Pause*]
¿Sabía usted que fue ilegal entrar de nuevo a los Estados Unidos después de ser deportado?	17:16	***BPA:***	Did you know that it was illegal to re-enter the United States after being deported?

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
No.		***HRR:***	No.
¿No? ¿No sabía que era ilegal?		***BPA:***	No? You didn't know that it was illegal?
No, esa vez era algo de... [*ui*]		***HRR:***	No, that time was something of… [*ui*]
¿No… no sabía… no sabía… no… usted sabía que era… vol-ver a regresar después de que lo deportaron?		***BPA:***	You… you didn't know… didn't know… didn't… you knew that it was… coming back again after you were deported?
No, [*ui*] apenas…, apenas [*ui*] pa´ México, sí.		***HRR:***	No, [*ui*] hardly…, hardly [*ui*] to Mexico, yes.
[*Pause*]			[*Pause*]
Pero hoy no está en México. Usted regresó a los Estados Unidos.	17:49	***BPA:***	But you're not in Mexico now. You returned to the United States.
No, no, no esta. Nomás la primera vez [*ui*].		***HRR:***	No, no, not this one. Just the first time [*ui*].
¿Cómo?	17:57	***BPA:***	What?
Primera vez que me arrestaron.		***HRR:***	First time they arrested me.
¿Esta es tu primera vez?		***BPA:***	This is your first time?
Sí, sí.		***HRR:***	Yes, yes.
No, tú tienes muchos arrestos.	18:03	***BPA:***	No, you have a lot of arrests.
No, hace muchos años atrás.		***HRR:***	No, that was many years ago.
Yes, hace muchos años.		***BPA:***	*Yes*, many years ago.
Sí.		***HRR:***	Yes.

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Pero tú tienes muchos arrestos.		***BPA:***	But you have a lot of arrests.
Son cinco años [*ui*]. Apenas primera vez regresar, sí.		***HRR:***	It's five years [*ui*]. Barely first time returning, yes.
[*Pause*]			[*Pause*]
¿Tiene usted algún miedo de persecución o tortura en su país si lo sacan de los Estados Unidos? [*Pause*] ¿Tiene usted miedo regresar a México?	18:33	***BPA:***	Do you have any fear of persecution or torture in your country if you are removed from of the United States? [*Pause*] Are you afraid of returning to Mexico?
Sí.		***HRR:***	Yes.
¿Sí?		***BPA:***	Yes?
Sí.	18:47	***HRR:***	Yes.
[*Pause*]			[*Pause*]
¿Por qué tiene miedo regresar a México?	18:54	***BPA:***	Why are you afraid to return to Mexico?
¿Qué?		***HRR:***	What?
¿Por qué tiene miedo regresar a México?		***BPA:***	Why are you afraid to return to Mexico?
De verdad, [*ui*].	19:03	***HRR:***	Honestly, [*ui*].
¿Cómo?		***BPA:***	What?
[*ui*] a México.		***HRR:***	[*ui*] to Mexico.
¿Pero por qué tiene miedo regresar a México?		***BPA:***	But why are you afraid to return to Mexico?
Tiene [*ui*].		***HRR:***	It has [*ui*].

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
[*Pause*]			[*Pause*]
¿Hay o… hay algo más que gusta decir usted en este momento?	19:43	***BPA:***	Is there ot... is there anything more that you would like to say at this time?
No.		***HRR:***	No.
¿No?		***BPA:***	No?
No.		***HRR:***	No.
¿Usted conoce el camino de Tijuana a Santa María?	19:54	***BPA:***	Do you know the way from Tijuana to Santa María?
No, yo no conozco, pero…		***HRR:***	No, I don't know it, but…
[*Pause*]			[*Pause*]
¿Hizo usted arreglos con alguien para que le ayudara a cruzar?	20:24	***BPA:***	Did you make arrangements with anyone so they could help you cross?
Sí.		***HRR:***	Yes.
¿Sí? ¿Con quién?		***BPA:***	Yes? With whom?
Un amigo [*ui*].		***HRR:***	A friend [*ui*].
¿Cómo se llama su amigo?		***BPA:***	What's your friend's name?
[*ui*]	20:41	***HRR:***	[*ui*]
¿Está aquí?		***BPA:***	Is he here?
No está.		***HRR:***	He is not.
¿No está?		***BPA:***	He's not?
[*ui*]		***HRR:***	[ui]
¿Qué pasó con él?		***BPA:***	What happened to him?

TRANSCRIPTION	TIME	SPEAKER	TRANSLATION
Ya [*ui*] pa´ otro lado.		***HRR:***	He's already [*ui*] somewhere else.
[*Pause*]			[*Pause*]
¿Para qué lado se fue?	21:12	***BPA:***	Where did he go?
Hace dos años [*ui*]…		***HRR:***	Two years ago [*ui*]…
No, no, no, no. Pero le pregunté que si hoy usted hizo arreglos con un coyote para que lo tra-jiera.		***BPA:***	No, no, no, no. But I asked you if today you made arrangements with a coyote for him to bring you.
No, ya no.	21:26	***HRR:***	No, not anymore.
¿No?		***BPA:***	No?
No.		***HRR:***	No.
Okey. [*Pause*] *This concludes the video sworn statement. The time is 8:57 a.m.* Es todo, señor. Gracias.		***BPA:***	Okay. [*Pause*] *This concludes the video sworn statement. The time is 8:57 a.m.* That´s all, sir. Thanks.
[*ui*]	22:15	***HRR:***	[*ui*]
The door doesn´t [*ui*]. *I think it needs* [*ui*].		***BPA:***	*The door doesn´t* [*ui*]. *I think it needs* [*ui*].
[End of transcription.]	22:41		***[End of translation.]***

EXHIBIT C

U.S. DEPARTMENT OF HOMELAND SECURITY

RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT

Event No: [redacted]

IN RE: HERRERA-HERNANDEZ, PAULINO FILE NO. 089 851 632

EXECUTED AT SAN DIEGO, CALIFORNIA DATE November 15, 2014

Before the following immigration officer of the U.S. Department of Homeland Security: ARACELI BARBA-DE LA CRUZ

in the Spanish language. Interpreter NONE used.

I, PAULINO HERRERA-HERNANDEZ acknowledge that the above-named officer has identified himself to me as an officer of the United States Department of Homeland Security, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding: MY ILLEGAL RE-ENTRY INTO THE UNITED STATES

He has told me that my statement must be freely and voluntarily given and has advised me of these rights:

"You have the right to remain silent.
Anything you say can be used against you in court, or in any immigration or administrative proceeding.
You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

I am willing to make a statement without anyone else being present. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.
Being duly sworn, I make the following statement:

I understand that I should now consider only the criminal rights listed above on this page.

Q. Are you under the influence of any mind-altering substances at this time (medications, alcohol or drugs)?
A. No.
Q. Are you willing to answer my questions at this time without a lawyer present?
A. Yes.
Q. What is your true and correct name?
A. Paulino HERRERA-Hernandez.
Q. Have you used any other names?
A. No.
Q. Of what country are you a citizen?
A. Mixteco.
Q. Are you a citizen of Mexico?
A. Yes, Mexican.
Q. What is your date of birth?
A. 1972 (CIS: 3/10/1972)
Q. What is the month and day?
A. The 10th of March.
Q. What is your place of birth?
A. Ochapa Grande, Gerrero, Mexico.
Q. Do you have any legal Immigration documents?
A. No.
Q. Have you ever been ordered deported, excluded, or removed from the United States?
A. Twice.
Q. To what country were you deported?
A. Tijuana.
Q. So you were removed to Mexico?
A. Yes.

...(CONTINUED ON I-831)

X [signature]

Alien's Name	File Number	Date
PAULINO HERRERA-HERNANDEZ	089 851 632 Event No: [redacted]	November 15, 2014

Q. After being deported, excluded or removed, did you ever apply or request permission to re-enter the United States legally?
A. No, no.
Q. When did you last enter the United States?
A. Thursday.
Q. Three days ago?
A. Yes.
Q. Today is Saturday the 15th, Thursday was the 13th, is that when you entered?
A. Yes.
Q. At what time?
A. At eight in the night.
Q. How did you last enter the United States?
A. Near the toll booth.
Q. Not through the Port of Entry?
A. No, through the mountain.
Q. Was there a fence where you crossed?
A. Yes.
Q. How did you get over the fence?
A. I went over.
Q. Did you use a rope, or did you go around?
A. Yes, no I went over.
Q. What is your destination in the United States (city and state)?
A. Santa Maria.
Q. In California?
A. Yes.
Q. Did you know it was illegal to re-enter the United States after being deported?
A. No, no I was in Mexico. This is my first time.
Q. This is not your first time you have been arrested many times, right?
A. Yes, many years ago. This is my first time coming back in may years.
Q. Do you have any fear of persecution or torture should you be removed from the United States?
A. Yes.
Q. Why are you afraid to return to Mexico?
A. I have a wife and kids.
Q. Is there anything else you would like to say at this time?
A. No.
Q. Do you know the route from Tijuana to Santa Maria?
A. No, I don't know it.
Q. Did you make arrangements with someone to help you cross?
A. Yes, with a friend.
Q. Is your friend here?
A. No he's not here.
Q. Where is he?
A. He left two years ago.
Q. No, on this occasion did you make arrangements with a smuggler?
A. No, no.

I have read (or have had read to me) the foregoing statement consisting of 2 pages. I affirm that the answers attributed to me herein are true and correct to the best of my knowledge and

Signature	Title
ARACELI BARBA-DE LA CRUZ	BORDER PATROL AGENT

Alien's Name	File Number	Date
PAULINO HERRERA-HERNANDEZ	089 851 632 Event No: [redacted]	November 15, 2014

belief and that this statement is a full, true, and correct record of my questioning by the above-named officer of the Immigration and Naturalization Service. I have initialized each page of this statement (and the corrections noted on page(s) __________________).

Signature of alien: ____________________

Subscribed and sworn to me at: San Diego, California on November 15, 2014.

(Signature of Immigration Officer)
BPA Araceli Barba De La Cruz

(Signature of Witness)
BPA Raymond Miller

Signature	Title
ARACELI BARBA-DE LA CRUZ	BORDER PATROL AGENT

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been served this day upon:

Assistant U.S. Attorney Benjamin Katz via ECF/NEF

Respectfully submitted,

DATED: March 12, 2015

s/ Amrutha N. Jindal
AMRUTHA N. JINDAL
Federal Defenders of San Diego, Inc.
Attorneys for Paulino Herrera-Hernandez